

Lawsuits May Gain Support From Study

By Christopher Ryan

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The U.S. Environmental Protection Agency's assumption that tobacco smoke is one of the worst indoor air pollutants could lead to a flood of lawsuits against tobacco companies.

Health groups say that study pressure businesses to ban smoking in the workplace, and more even to consider smoking bans at home.

Richard Daynard, the director of the Tobacco Products Liability Project, which encourages lawsuits against tobacco companies, said that the EPA study released yesterday will strengthen plaintiffs' cases. "It really means that there is no longer any legitimate scientific doubt that smoking causes lung cancer in human beings," Daynard said.

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The biggest effect of the report will be in future lawsuits, but it will also strengthen current cases involving secondhand tobacco smoke, including a suit filed by Winston-Salem health interests, and suits to ban the smoke from restaurants, bars, theaters and a cigar shop in Mississippi involving a potter, a long-haired man who contracted lung cancer after working in a cigar barbershop.

Evidence that secondhand smoke causes lung cancer in children will affect judges' decisions in future cases.

"I think it is going to be a big issue in child custody matters," Daynard said.

The report also creates lawsuits for employees at businesses that

permit smoking. Restaurants, in particular, may be liable if they require their employees to work in smoking sections, Daynard said.

Bud Richard Johnson, the general counsel for the National Restaurant Association, said that Workers' Compensation laws prevent employees from suing their employers for tobacco-related illnesses.

The EPA report might pressure restaurants to put smoking areas further away from non-smoking areas, but Johnson said that non-smoking customers exposed to cigarette smoke at restaurants would have a difficult time convincing courts that restaurants were liable for lung disease caused by tobacco fumes. "You have tremendous proof problems," he said.

Insurance companies say they are likely to require stronger non-smoking rules in their group health policies because of the study, said Sean Nicosky, a senior

vice president at the Insurance Information Institute. "They have been encouraging this already," he said.

Randy Ferguson, the executive vice president for group insurance operations at Jefferson-Pilot Corp., which is based in Greensboro, agreed that the insurance industry is unlikely to make any immediate changes because of the report.

Jefferson-Pilot actuaries are only just beginning to study the report. "I don't really anticipate any change in our group insurance policies (because of the EPA study)," Ferguson said.

North Carolina laws on smokers' rights prevent businesses from requiring employees who smoke to pay more for health insurance than can be justified by the risk of smoking, Ferguson said. The state law also prohibits companies from firing employees for off-the-job smoking.

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